

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

LAVARRY FITZGERALD

PLAINTIFF

VS.

CIVIL ACTION NO. 3:01CV535S

**ROBERT L. JOHNSON; LAWRENCE
KELLY and ROBERT CULPEPPER**

DEFENDANTS

ORDER

This matter came before the court on the “Notice of Breachment of Agreed Order, Motion to Compel Defendants to Comply, Notice of Defendants’ Contempt” filed by the Plaintiff. This matter was dismissed in 2002 by an Agreed Order requiring the Defendants to refer the Plaintiff for an examination by Wilson Limb and Brace Company, to determine whether he needed special orthopedic shoes. In 2004, the Plaintiff moved the court to compel the Defendants to comply with that Order, as he still had not received the requested shoes. The court required a response to that Motion, and the Defendants did respond, stating that the Plaintiff had been sent to another prosthetics company to have custom molded insoles and shoes fashioned. Based upon that representation, the court denied the Plaintiff’s Motion.

In the Motion currently before the court, the Plaintiff admits that he received orthopedic shoes in October, 2005; however, now he states that he needs another pair. Apparently, he has requested this additional pair of shoes from prison authorities, but his request has been denied. The Plaintiff has been informed by prison officials that he must pursue his request through the Administrative Remedies Program, but he believes that, having exhausted his claim prior to his original lawsuit, he need not go through that program a second time. The court disagrees. Fitzgerald’s first grievance was that he needed orthopedic shoes, and that issue has been resolved.

The current dispute is whether, having received orthopedic shoes in October, 2005, Fitzgerald is now entitled to another pair. This is a different question, and prison officials are entitled to conduct their own review of that issue. In any event, before this court can conclude that MDOC officials are in violation of its earlier Orders, there must be evidence substantiating Fitzgerald's claim that he is wrongfully being denied orthopedic shoes.

IT IS, THEREFORE, ORDERED, that the Plaintiff's "Notice of Breachment of Agreed Order, Motion to Compel Defendants to Comply, Notice of Defendants' Contempt" is hereby **denied**.

IT IS SO ORDERED, this the 16th day of October, 2006.

S/James C. Sumner
UNITED STATES MAGISTRATE JUDGE